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February 7, 2002

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BY FACSIMILE AND OVERNIGHT DELIVERY

David Waddell, Esq.
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

**Re: Show Cause Proceeding Against Talk.com, Inc.
Docket No. 01-00216**

Dear Mr. Waddell:

Respondent Talk.com Holding Corp ("Talk.com" or the "Company") has received the Consumer Services Division's ("CSD") Motion to Compel Responses to its Discovery Requests. We are happy to provide a detailed response to the Motion as may be requested by Hearing Officer Hotvedt. In the meantime, Talk.com offers this brief letter response to the CSD's Motion.

The CSD's Motion merely underscores how, despite the fact that this docket was formally opened nearly a year ago, CSD has put the accusatory cart before its investigatory horse. After issuing a 115-page Show Cause Order with voluminous attachments (many incorporating documents voluntarily provided by the Company), CSD now claims that it needs broad, unfocused discovery to investigate wholly unrelated issues and even unrelated companies. It is true that permissible discovery is not limited to evidence that would be admissible, but it must be likely to lead to the production of relevant and admissible evidence. CSD's broad requests are admittedly aimed at activities which are not part of this docket, and which have no bearing on the merits of the specific incidents that are alleged in the Show Cause. Instead, CSD's Motion claims it needs information to investigate potential violations not set forth in this docket. *See, e.g.*, Motion at 9-10 (billing detail); at 11 (maintenance of complaint records); at 17 (additional promotional checks); at 18 (misleading or deceptive marketing). CSD even claims it

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needs certain information to support potential actions against unspecified companies not subject to this proceeding. *See, e.g.*, Motion at 15 (seeking to investigate “the activities of other resellers that have been the subject of similar complaints and enforcement actions”).¹ None of this relates to the Show Cause in any way, nor appears likely to lead to evidence bearing upon the Show Cause. Rather, the requests appear to serve no purpose other than to pepper Talk.com with new allegations without giving it a fair opportunity to defend itself against those allegations already made.

While Talk.com does not question the CSD’s authority to conduct investigations, and while the Company concedes that CSD may open a separate investigation if it deems that course warranted, the Company submits that CSD could have and should have conducted a thorough investigation of the incidents in this docket *before* recommending the Show Cause Order, not afterwards. The CSD has initiated what is by far its most ambitious enforcement action ever and is asking the Authority to fine Talk.com millions of dollars. Talk.com has fully cooperated with the CSD’s requests since opening the docket and patiently awaited the opportunity to defend itself against these allegations. Now that that opportunity has come, Talk.com submits that due process and fundamental fairness require that the proceeding be focused solely on the issues identified in the Show Cause. Talk.com respectfully submits that

¹ That CSD is seeking to investigate issues unrelated to the Show Cause incidents is apparent from the very first document request CSD propounds, in which CSD seeks “all documents reflecting the corporate structure and corporate formation” of the Company. Nowhere in CSD’s motion does it acknowledge that Talk America Holdings Inc, Talk.com’s parent, is a public corporation traded on the NASDAQ under the symbol TALK, or that Talk.com met with CSD on multiple occasions and provided answers to every question CSD asked. Frankly, we are surprised that CSD would claim at this late date that it needs to “determine whether Talk.com is doing business through the use of other corporate identities against which additional consumer complaints have been filed.” Motion at 6.

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CSD's broad discovery requests should be denied and that CSD should be required to re-state any discovery so that it addresses issues raised in the incidents in question, not potential investigations it could choose to conduct outside of this proceeding.

Very truly yours,

KELLEY DRYE & WARREN LLP

By: 

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cc: Hon. Gary A. Hotvedt
Lynn Questell, Esq.